

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE ANTHONY J. BATTAGLIA, JUDGE PRESIDING

IN RE INCRETIN-BASED THERAPIES ) CASE NO. 13-MD-2452-AJB  
PRODUCTS LIABILITY LITIGATION, )

----- ) SAN DIEGO, CALIFORNIA  
JUNE 2, 2015

AS TO ALL RELATED AND MEMBER CASES ) 2:06 P.M.  
\_\_\_\_\_)

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
RE: STATUS CONFERENCE

OFFICIAL REPORTER: JEANNETTE N. HILL, C.S.R.  
U.S. COURTHOUSE  
333 WEST BROADWAY, RM 420  
SAN DIEGO, CALIFORNIA 92101  
(619) 702-3905

REPORTED BY STENOTYPE, TRANSCRIPT PRODUCED BY COMPUTER

JUNE 2, 2015

1 TELEPHONIC APPEARANCES

2 FOR THE PLAINTIFFS: RYAN THOMPSON  
3 WATTS GUERRA LLP  
4 5250 PRUE ROAD, SUITE 525  
5 SAN ANTONIO, TEXAS 78240

6  
7 MAXWELL S. KENNERLY  
8 BEASLEY FIRM, LLC  
9 1125 WALNUT STREET  
10 PHILADELPHIA, PA 19107

11 FOR THE DEFENDANTS: DOUGLAS R. MARVIN  
12 WILLIAMS & CONNOLLY LLP  
13 725 TWELFTH STREET, N.W.  
14 WASHINGTON, D.C. 20005

15  
16 KENNETH J. KING  
17 PEPPER HAMILTON LLP  
18 THE NEW YORK TIMES BUILDING  
19 37TH FLOOR, 620 EIGHTH AVENUE  
20 NEW YORK, NEW YORK 10018-1405

21 ALSO PRESENT: MATTHEW LAHANA, LAW CLERK TO  
22 JUDGE HIGHBERGER  
23  
24  
25

JUNE 2, 2015

1           **SAN DIEGO, CALIFORNIA; TUESDAY, JUNE 2, 2015; 2:06 P.M.**

2           **DEPUTY CLERK:**   CALLING MATTER FOUR ON CALENDAR, CASE  
3           NUMBER 13MD2452, IN RE INCRETIN MIMETICS PRODUCTS LIABILITY  
4           LITIGATION, ON FOR STATUS CONFERENCE.

5           **THE COURT:**   HI, EVERYBODY.   JUDGE BATTAGLIA HERE.   I  
6           KNOW WE HAVE A GROUP OF YOU ON THE PHONE.   I HAVE YOUR LIST OF  
7           ATTENDEES.   WE'LL MAKE THAT COURT'S EXHIBIT 1 TO THE HEARING SO  
8           ALL OF YOUR APPEARANCES ARE RECORDED.   AND JUDGE HIGHBERGER IS  
9           ON THE ROAD.   AND WE HAVE HIS CLERK -- IS IT MATTHEW?

10          **MR. LAHANA:**   YES, YOUR HONOR.

11          **THE COURT:**   HI.   -- AND HE IS GOING TO BE MONITORING  
12          THIS.

13                 I KNOW FROM YOUR CALLS EARLIER -- OR SOME CALLS  
14                 EARLIER THAT YOU HAVE A PLAN IN PLACE TO PROCEED WITH THE  
15                 FILING OF THE PREEMPTION MOTION ON SCHEDULE.   AND SINCE I'M  
16                 GOING TO BE GONE OUT OF THE COUNTRY STARTING TOMORROW UNTIL  
17                 ABOUT THE TIME YOUR THINGS ARE FILED, I JUST KIND OF WOULD LIKE  
18                 TO KNOW WHAT YOU ARE GOING TO DO TO ME WHILE I'M GONE.

19                 SO WHAT'S THIS PLAN?   WHO CAN TELL ME WHAT YOU FOLKS  
20                 ANTICIPATE IT'S GOING TO LOOK LIKE?   ANYBODY?

21          **MR. THOMPSON:**   YOUR HONOR, RYAN THOMPSON FOR THE  
22                 PLAINTIFFS.   AS FAR AS A PLAN AT THIS POINT AS TO WHAT THINGS  
23                 MIGHT LOOK LIKE, I THINK THERE ARE SOME DISCUSSIONS STILL TO BE  
24                 HAD BETWEEN PLAINTIFFS AND DEFENDANTS AS IT RELATES TO ANY  
25                 POTENTIAL AGREEMENT ON THINGS LIKE PAGE NUMBERS OR THE LIKE.

JUNE 2, 2015

1           AT THIS POINT I THINK THAT PLAINTIFFS ARE STILL  
2 CONTEMPLATING THE POSSIBILITY OF FILING AN AFFIRMATIVE MOTION  
3 ON PREEMPTION. AND WE RELAYED THAT TO DEFENDANTS IN  
4 PRELIMINARY CONVERSATIONS AND WE WILL CONTINUE THAT DIALOGUE  
5 AND HOPEFULLY REACH AN AGREEMENT ON PAGE NUMBERS.

6           I THINK AT THIS POINT PLAINTIFFS ARE FINE WITH  
7 FOLLOWING PAGE NUMBERS AS SET BY THE RULES, YOU KNOW, SUBJECT  
8 TO ANY AGREEMENTS MADE WITH THE DEFENDANTS OR GUIDANCE BY THE  
9 COURT.

10           **THE COURT:** OKAY. AND SO ANY AGREEMENTS YOU FOLKS  
11 REACH, RUN THEM BY MY LAW CLERK, LEX, AND SHE WILL GET WORD TO  
12 ME IN CASE THERE IS SOME CONCERN. I MEAN, 200 PAGES OR  
13 SOMETHING ISN'T GOING TO HAPPEN, BUT SOMETHING REASONABLE WE  
14 COULD PROBABLY TOLERATE.

15           AND I'M A LITTLE CONCERNED ABOUT THIS FREE-FLOWING  
16 IDEA OF COMPETING MOTIONS. I'M NOT SURE WHAT THE VALUE WOULD  
17 BE.

18           LET'S ASSUME THE DEFENSE IS GOING TO FILE AS THEY'VE  
19 ASKED TO DO IN THE PAST OR HAVE DONE IN PART AND WE DEFERRED IT  
20 OR DEFLECTED IT. WHAT DO YOU GAIN, MR. THOMPSON, BY AN  
21 AFFIRMATIVE MOTION YOURSELF? IS IT A CONCERN OVER GETTING MORE  
22 PAGES TO PRESS YOUR POINTS, OR SOMETHING THAT I'M NOT PICKING  
23 UP?

24           **MR. THOMPSON:** WELL, YOUR HONOR -- AND I MIGHT  
25 DEFER, ON WHAT WE PICK UP, TO PEOPLE ON THE BRIEFING SIDE OF

1 THE THINGS, WHICH I DON'T CLAIM TO BE. BUT AS FAR AS PAGE  
2 LIMITS GOES, WE'RE NOT LOOKING TO INCREASE THE VOLUME OF PAPERS  
3 PUT ON THE COURT BY DOING AN AFFIRMATIVE MOTION.

4 **THE COURT:** OKAY. WELL, IF SOMEONE ELSE ON THE  
5 PLAINTIFFS' SIDE WANTS TO ADDRESS IT. I JUST DON'T KNOW THAT I  
6 GET IT, OTHER THAN NEEDING EITHER MORE SPACE OR MORE -- YEAH,  
7 MORE SPACE, FRANKLY. BUT SOMEBODY ENLIGHTEN ME.

8 **MR. KENNERLY:** YOUR HONOR, THIS IS MR. KENNERLY.  
9 WHAT WE ENVISION OFF OF THAT IS NOT JUST A BUNCH OF ADDITIONAL  
10 PAGES TO MAKE AN ARGUMENT, BUT WE BELIEVE THERE ARE A DISCRETE  
11 NUMBER OF FACTUAL ISSUES THAT ARE NOT GENUINELY DISPUTED, THAT  
12 WE BELIEVE THAT IF THE COURT AGREES THEY ARE NOT GENUINELY  
13 DISPUTED WOULD BE DISPOSITIVELY IN OUR FAVOR. AND IF WE DON'T  
14 HAVE A MOTION FOR THAT, WE CAN'T CREATE A CLEAR RECORD.

15 SO WE DON'T EVEN THINK WE HAVE 25 PAGES OF IT. IT  
16 WOULD BE VERY NARROWLY FOCUSED AND IT WOULD NOT BE AN EFFORT TO  
17 PREEMPTIVELY ADDRESS ISSUES BY THE DEFENDANTS. IT WOULD BE A  
18 SHORT, CONCRETE VERSION OF IT. IF WE DIDN'T HAVE THAT, WE  
19 WOULDN'T HAVE AN OPPORTUNITY TO PRESENT THAT COMPONENT OF THE  
20 RECORD THAT WE BELIEVE IS NOT GENUINELY DISPUTED, AND WOULD  
21 SUPPORT THE COURT ENTERING SUMMARY JUDGMENT AGAINST THE  
22 DEFENDANTS ON PREEMPTION.

23 **THE COURT:** IT WOULDN'T BE FEASIBLE TO DO THAT IN  
24 SOME COURSE, SOME ASPECT OF OPPOSITION. YOU FEEL AFFIRMATIVELY  
25 ADDRESSING IT WOULD MAKE IT MOST CLEAR FOR PURPOSES OF THE

1 COURT'S REVIEW OR LATER APPELLATE REVIEW?

2 **MR. KENNERLY:** YES, YOUR HONOR. AND WE WOULD BE  
3 CONCERNED THAT IF WE DIDN'T HAVE OUR OWN OPPORTUNITY TO PRESENT  
4 IT CLEARLY, THEN THE ALTERNATIVE WOULD BE SOMETHING LIKE A  
5 50-PAGE RESPONSE, WHICH WE DON'T THINK WOULD BE APPROPRIATE OR  
6 USEFUL TO THE COURT. WE WOULD RATHER HAVE SOMETHING VERY  
7 NARROWLY FOCUSED THAT CREATES A CLEAR RECORD.

8 **THE COURT:** WELL, THAT IS HELPFUL. THANK YOU FOR  
9 BEING SPECIFIC. I UNDERSTAND YOUR POINT.

10 BUT THIS POINT THE DEFENSE ARE FILING FOR SURE IS MY  
11 ANTICIPATION. SOMEBODY ON THE DEFENSE WANT TO COMMENT?

12 **MR. MARVIN:** THAT IS CORRECT, YOUR HONOR. AND AT THE  
13 LAST STATUS CONFERENCE -- THIS IS DOUGLAS MARVIN -- AT THE LAST  
14 STATUS CONFERENCE YOU ASKED WHETHER IT WOULD BE SEPARATE  
15 MOTIONS BY EACH DEFENDANT OR A JOINT MOTION ON BEHALF OF ALL OF  
16 THE DEFENDANTS.

17 **THE COURT:** RIGHT.

18 **MR. MARVIN:** AND THE ANSWER TO THAT QUESTION IS IT  
19 WOULD BE A JOINT MOTION.

20 **THE COURT:** OKAY. WELL, GREAT NEWS.

21 WELL, I APPRECIATE THE INSIGHT BECAUSE NOW I KNOW  
22 WHAT I WILL LIKELY SEE UPON RETURN. AND CONTINUE YOUR  
23 DISCUSSIONS ABOUT THE PAGES. IT SOUNDS LIKE THE DATES ARE  
24 OTHERWISE FINE AS WE PREVIOUSLY SET THEM OUT.

25 ANY AGREEMENTS YOU COME TO, THOUGH, RELAY TO MY LAW

1 CLERK, LEX, SO WE HAVE A HEADS-UP AS TO WHAT TO EXPECT, AND GET  
2 THE PASS ON ANYTHING THAT MAY BE UNUSUAL OR ATYPICAL.

3 AT THIS POINT WHAT THE PLAINTIFFS SAY THEY ARE  
4 CONTEMPLATING, NOT COMMITTED TO, I DON'T FIND TO BE PROBLEMATIC  
5 IF IT'S GOING TO BE ALONG THE LINES MR. KENNERLY AND OTHERS  
6 HAVE EXPRESSED.

7 SO I APPRECIATE YOUR INDULGING THE EXTRA TIME HERE SO  
8 I HAVE A COMFORT LEVEL AS I LEAVE THE JURISDICTION. IS THERE  
9 ANYTHING ELSE EITHER SIDE WANTS TO DISCUSS IN THIS REGARD,  
10 EXCEPT FOR PERHAPS AS YOU REQUESTED, SETTING UP A FURTHER  
11 STATUS CONFERENCE? ANYTHING ELSE BESIDES THAT?

12 **MR. KING:** YOUR HONOR, IT'S KEN KING FOR LILLY. I  
13 KNOW WE HAD TOLD YOUR CLERK WE COULD MOVE THE THYROID STATUS  
14 CONFERENCE TO A LATER DATE. IF YOUR HONOR WANTS A BRIEF  
15 UPDATE, I'M PREPARED TO GIVE IT. IF NOT, WE CAN WAIT.

16 **THE COURT:** NO. WE CAN WAIT. SO WHEN WOULD YOU  
17 FOLKS LIKE TO TOUCH BASE AGAIN, OR SHOULD WE WAIT AND LET THE  
18 MOTIONS PLAY OUT ON THE SCHEDULE THEREON? WHAT IS YOUR  
19 PREFERENCES?

20 **MR. THOMPSON:** YOUR HONOR, RYAN THOMPSON FOR THE  
21 PLAINTIFFS. WE HAD DISCUSSED WITH SOME OF THE DEFENDANTS  
22 SETTING A TIME EITHER IN LATE JULY OR EARLY AUGUST AS A  
23 PLACEHOLDER. I DON'T HAVE A STRONG OPINION IN THAT REGARD.  
24 OBVIOUSLY, WHATEVER WORKS FOR THE COURT WILL WORK FOR US. I  
25 HAD INITIALLY PROPOSED AUGUST 10TH, WHICH WOULD GET US PAST THE

1 REBUTTAL, EXPERT REPORTS ON GENERAL CAUSATION, AND BRIEFING ON  
2 THE PREEMPTION MOTIONS. BUT SUBJECT TO SOME TIME IN THAT TIME  
3 PERIOD, WE THOUGHT A PLACEHOLDER IN THERE MIGHT BE GOOD.

4 **THE COURT:** OKAY. MR. KING AND OTHERS ON THE  
5 DEFENSE, DOES THAT WEEK LOOK LIKE A GOOD TIME TO TARGET A  
6 FURTHER STATUS AND PERHAPS WEAVE IN THE THYROID CASES AT THAT  
7 TIME, UNLESS SOMETHING ON THAT FRONT BREAKS SOONER?

8 **MR. KING:** KEN KING FOR LILLY. THAT IS FINE WITH ME.  
9 I DON'T KNOW ABOUT THE OTHER DEFENDANTS.

10 **THE COURT:** LET'S PICK A SPECIFIC DATE. THAT MIGHT  
11 BE MORE PRODUCTIVE. THE 10TH I AM GOING TO HAVE A LONG  
12 CRIMINAL CALENDAR, SO WE COULD GO THE 11TH, 12TH OR 13TH.

13 ANYTHING IN THOSE DAYS THAT SOMEONE WANTS TO MAKE A  
14 PITCH FOR?

15 **MR. THOMPSON:** THE 11TH WOULD WORK FOR PLAINTIFFS,  
16 YOUR HONOR.

17 **THE COURT:** ANYBODY ON THE DEFENSE SIDE THAT COULDN'T  
18 MAKE AUGUST 11TH WORK?

19 HEARING NO OPPOSITION, DO YOU LIKE THIS 2:00 TIME?  
20 IS THIS CONDUCIVE, OR WOULD YOU PREFER 10:00 THAT DAY? ANY  
21 SPECIFIC PREFERENCE?

22 **MR. THOMPSON:** FROM PLAINTIFFS' PERFECTIVE, EITHER  
23 WOULD BE FINE. THESE AFTERNOON CONFERENCES WORK, BUT IF  
24 SOMEONE NEEDS MORNING THAT IS FINE, AS WELL.

25 **THE COURT:** LET'S SHOOT FOR 2:00 UNLESS SOMEBODY ON



1 THE DEFENSE SIDE FEELS THAT'S NOT GOING TO WORK. ANYBODY?

2 HEARING NONE, WE'LL GO FOR AUGUST 11TH AT 2:00.

3 WE'LL CHECK THE STATUS ON THE MDL AND THE GROUP WE CALL THE  
4 THYROID CASES. OBVIOUSLY, IF SOMETHING COMES UP IN THE  
5 MEANTIME IN ANY OF THESE REGARDS, HOLLER SOONER. AND IF NOT,  
6 WE'LL ANTICIPATE SEEING YOUR PAPERS STARTING JUNE 19TH AND GET  
7 TO WORK ON THIS IMPORTANT ISSUE.

8 SO ANYTHING ELSE FOR NOW, FOLKS?

9 **MR. THOMPSON:** NOTHING FROM PLAINTIFFS, YOUR HONOR.

10 **THE COURT:** AND ANYBODY ON THE DEFENSE?

11 SOUNDS LIKE NOT. THANK YOU VERY MUCH AND HAVE A  
12 GREAT REST OF THE DAY AND WE'LL BE IN TOUCH. FOR NOW WE ARE IN  
13 RECESS. SO LONG.

14 (PROCEEDINGS CONCLUDED AT 2:17 P.M.)

15 CERTIFICATION

16 I HEREBY CERTIFY THAT I AM A DULY APPOINTED,  
17 QUALIFIED AND ACTING OFFICIAL COURT REPORTER FOR THE UNITED  
18 STATES DISTRICT COURT; THAT THE FOREGOING IS A TRUE AND CORRECT  
19 TRANSCRIPT OF THE PROCEEDINGS HAD IN THE AFOREMENTIONED CAUSE  
20 ON JUNE 2, 2015; THAT SAID TRANSCRIPT IS A TRUE AND CORRECT  
21 TRANSCRIPTION OF MY STENOGRAPHIC NOTES; AND THAT THE FORMAT  
22 USED HEREIN COMPLIES WITH THE RULES AND REQUIREMENTS OF THE  
23 UNITED STATES JUDICIAL CONFERENCE.

24 DATED: AUGUST 14, 2015, AT SAN DIEGO, CALIFORNIA.

25 S/N \_\_\_\_\_  
JEANNETTE N. HILL, OFFICIAL REPORTER, CSR NO. 11148

JUNE 2, 2015